

From: ksvm@mac.com@inetgw
To: Microsoft ATR
Date: 12/23/01 12:55pm
Subject: Microsoft Settlement

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RE: Reject Microsoft Settlement
Please include in the record of US v Microsoft

DATE: December 21, 2001

To Whom it May Concern:

I am writing to ask that you do not accept the Revised Proposed Final Judgement. It does nothing to remedy Microsoft's illegal behavior, and moreover appears to be completely written by Microsoft lawyers. Charles James would have us believe that this is a good agreement for the United States of America. I disagree. It is worse than no agreement at all.

Microsoft has adopted a corporate culture which has no respect for the law or the free society in which we live. Microsoft is unrepentant and believes itself above the law and beyond the reach of the court system. Now is the time to prove them wrong.

"AND WHEREAS, this Final Judgement does not constitute any admission by any party regarding any issue of fact or law."

I'm not a lawyer, but this says to me that Microsoft does not, in the proposed settlement, admit any wrongdoing or illegal behavior. This seems unacceptable given that they have already been found to have a pattern of illegal behavior by both a Federal Judge and a Federal Court of Appeals. What possible justification can there be for such weak terms at this point? This is a remand only for remedy not, points of law or fact and yet Microsoft appears to be able to maintain it's legal position that it did no wrong in the Proposed Judgement. This is unacceptable.

The only thing the public can surmise from these terms is that The United States of America is afraid of Microsoft. The United States of America is afraid to face the world's largest software maker in court, in a case they have already won, not once but twice. The United States has won both in Federal Court and on appeal by an overwhelming margin. What possible scenario of negotiations would lead to wording which allows Microsoft not only to go free without sanctions, but free without admission of an already proven pattern of illegal behavior? On it's face it appears ludicrous.

I have always had a great deal of faith in our system of government, particularly the judicial branch. This branch has not offered us perfect justice of course, it is merely one which attempts to rectify something which has gone wrong or at least to steer society in the right direction. At it's best that is all we can ask of our judicial branch.

Steer us in the right direction.

Prove to us and to Microsoft that we are equal under the law.

The Revised Proposed Final Judgement is flawed. It is full of loopholes such as describing a "Windows Operating System Product " as

"The software code that comprises a Windows Operating System Product shall be determined by Microsoft in it's sole discretion."

Clearly, as much of this case has revolved around whether or not browsers, media players and other similar software or middleware can be considered part of the Operating System. The few restrictions only apply to APIs, middleware and software that "Microsoft in it's sole discretion" doesn't consider a part of the "Windows Operating System Product". As they tried to prove in court that they could not separate their browser from the Windows Operating System Product, we know what Microsoft's view is on the subject even while we also know from court records that it is untrue. Given that Microsoft in this Revised

Proposed Final Judgement need not heed previous court findings of fact or law they will most assuredly continue in their legal position that it is the nature of their "Windows Operating System Product" to add functionality ad infinitum, which expands and extends Microsoft's Windows Monopoly into any and all new markets as it pleases.

Or in section J.2.

"No provision of this Final Judgement shall:

Prevent Microsoft from conditioning any license of any API, Documentation or Communications Protocol related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft product to any person or entity on the requirement that the licensee: (a) has no history of software counterfeiting or piracy or willful violation of intellectual property rights, (b) has reasonable business need for the API, Documentation or Communications Protocol for a planned shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit at its own expense, any computer program using such API, Documentation or Communications Protocols to third party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph."

Microsoft, here is being given "carte blanche" to restrict access to protocols ostensibly being offered in other parts of the agreement. Specifically, "reasonable, objective standards established by Microsoft", allows Microsoft, essentially in it's sole discretion the ability to be the gatekeeper of the APIs and protocols. This Judgement is worse than no Judgement at all because it is actually the building of Microsoft's next case, with the clear expectation that there will be a next case. We already know from past behavior, that Microsoft will push this language beyond the limits of credibility in order to extend their monopoly.

In particular the wording of J.2.(c) seems directed at open-source software, the only credible long term competition to Microsoft in the Server market. If disallowed access to APIs and communications protocols used by Microsoft in PCs, Microsoft will be able to embrace and extend into the Server market. They will of course suggest that open-source is not a viable business model, in spite of the fact it is being sold by many of the largest server vendors, such as IBM, Dell, SGI and others.

The Revised Proposed Final Judgement does nothing to remedy or sanction Microsoft for past illegal behavior. Further, this agreement in effect leaves no recourse but further litigation to remedy any transgressions in the future of the few weak sanctions it contains.

Microsoft is moving rapidly into financial services and banking with Passport, their hope at the least is to capture a transaction fee for every online transaction. It does not seem at all unlikely that "Passport" once established would then be made of plastic to replace VISA, MasterCard, Discover and American Express. What if any restrictions would the Proposed Final Judgement place on these types of behavior? None, in my estimation.

Microsoft has developed a copy protection scheme and is already deep in the process of entering the field of entertainment, media and access via MSN/ MSNBC. None of these endeavors are even approached by the wording of the Final Judgement. Microsoft clearly expects to extend it's Operating System Monopoly into media access and entertainment

monopolies. XBox, for example, is tied to the MSN service. There is nothing to keep Microsoft from having the MSN service inextricably tied to Windows in future versions.

Given the nature of their Windows monopoly, Microsoft can easily integrate these services into the "Windows Operating System Product" and raise the price of that product even more dramatically than they already have, as well as charging businesses for access to customers. These practices will not only crush other software vendors they will rapidly crush vendors in all manner of digital commerce.

Microsoft has made no real concessions, nor have they admitted the flaws of their past behavior. They have not promised to improve their behavior in the future.

If the Proposed Final Judgement stands, Microsoft will not be a better Corporate citizen.

They will be worse.

Sincerely,

Michael Mirande
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